

SERVICE DATE - JUNE 10, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34353 (Sub-No. 1)

UNION PACIFIC RAILROAD COMPANY–TRACKAGE RIGHTS EXEMPTION–
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: June 9, 2003

By petition filed on May 9, 2003, Union Pacific Railroad Company (UP) and The Burlington Northern and Santa Fe Railway Company (BNSF) request that we partially revoke the class exemption to permit the trackage rights arrangement exempted in STB Finance Docket No. 34353¹ to expire: (1) on or about June 22, 2003, for northbound trains; and (2) on or about October 16, 2003, for southbound trains.

According to petitioners, the trackage rights arrangement exempted in STB Finance Docket No. 34353 is necessary because UP will be performing maintenance and repairs on its main rail line and will use these trackage rights as an alternative route for its traffic while work is being performed. However, UP is only seeking, and BNSF is only willing to grant, temporary operating rights over BNSF's trackage during the period of maintenance activity on UP's trackage. Petitioners maintain that, without Board approval of temporary trackage rights, it is unlikely that any other arrangement could have been reached to allow UP to operate over BNSF's line, and UP would face the possibility of severe operational problems on the trackage for which maintenance is scheduled.

DISCUSSION AND CONCLUSION

Although UP and BNSF have expressly agreed on the term of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely, regardless of any durational contract provisions. Occasionally, trackage rights

¹ On May 9, 2003, UP also filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF to grant temporary overhead trackage rights to UP over a BNSF line of railroad between milepost 42.9 near Paola, KS, and BNSF milepost 633.0 near Joe Jct., TX, a distance of approximately 428.2 miles. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34353 (STB served May 29, 2003). The trackage rights operations under the exemption were scheduled to begin on May 16, 2003.

exemptions have been granted for a limited term rather than in perpetuity. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34242 (Sub-No. 1) (STB served Oct. 6, 2002).

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

UP's temporary trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted, and will have no adverse impact on shippers on the line because the trackage rights that are the subject of the exemption are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34353 to expire on or about June 22, 2003, for northbound trains, and on or about October 16, 2003, for southbound trains.²

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. 10502, the trackage rights exemption described in STB Finance Docket No. 34353, are exempted as discussed above, to permit the trackage rights to: (1) expire on or about June 22, 2003, for northbound trains; and (2) expire on or about October 16, 2003, for southbound trains.
3. Notice will be published in the Federal Register on **June 16, 2003**.
4. This decision is effective on June 20, 2003.

² Parties will not need to make this filing for temporary trackage rights approved pursuant to the new rule the Board recently adopted in Railroad Consolidation Procedures–Exemption for Temporary Trackage Rights, STB Ex Parte No. 282 (Sub-No. 20) (STB served May 23, 2003), which is scheduled to take effect on June 22, 2003. That rule will streamline the process for gaining Board approval in circumstances such as these so that parties may begin and end service as they have agreed under the terms of their trackage rights agreements.

5. Petitions to reopen must be filed by July 7, 2003.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary